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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,739	09/30/2003	William T. Ball	P06474US2	3981

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DES MOINES, IA 50309-2350

EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/674,739

**Applicant(s)**

BALL, WILLIAM T.

**Examiner**

Kathleen J. Prunner

**Art Unit**

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Specification***

1. The following informalities in the claims are noted: (A) in claim 1, on line 3, --an-- should be inserted before "overflow". Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oropallo et al. in view of Lewis. Oropallo et al. disclose an overflow system for a bathtub (note Fig. 1) which has a bottom 19, adjacent side walls and end walls 13, a drain port 18 in the bottom 19, and an overflow port 12 in one of the end walls, the overflow system having the claimed features including a drain pipe adapted to be in communication with the drain port 18 and the overflow port 12 (note Fig. 1), the drain pipe having an inverted L-shape (note Fig. 1) including a horizontal leg 11 extending into and through the overflow port 12 of the bathtub (note Figs. 3 and 13) and a vertical leg 16 extending downwardly for connection to a fluid drain system (note Fig. 1), and a solid cap 40 threaded onto threads of the horizontal leg 11 (note Fig. 13) extending through the overflow port 12 to close the end of the horizontal leg 11 (note Fig. 13). Although Oropallo et al. disclose that the horizontal leg 11 of the overflow drain pipe is externally threaded, attention is directed to Lewis who discloses another overflow system for a bathtub in which the horizontal leg of the overflow drain pipe is provided with internal threads which engage external threads on the cylindrical rim body of an overflow port cap (note the last sentence in ¶ 0020) in order to create an effective water-tight seal without the need for installation of a decorative overflow plate (note ¶ 0011). It would have been obvious to one of ordinary skill in the bathtub overflow system art, at the time the invention was made, to provide the horizontal leg of the overflow drain pipe of Oropallo et al. with internal threads which

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engage external threads on the cap in view of the teaching of Lewis in order to create an effective water-tight seal without the need for installation of a decorative overflow plate. With respect to claim 2, Oropallo et al. also disclose a plumbing test system including an overflow pipe 11 having a first exposed end (note Fig. 13) and a second end in communication with a fluid source (note lines 34-50 in col. 3) wherein the first end comprises a threaded portion and a cap assembly 40 threadably mounted to the first end and wherein a portion of the cap assembly 40 (constituted by annular seal 42) is composed of a material capable of sealing the first end when the cap assembly is threaded to the first end (note lines 36-39 in col. 3).

### ***Response to Arguments***

4. Applicant's arguments filed July 2, 2004 have been fully considered but they are not deemed persuasive.

5. Applicant's argument that the Examiner has not identified within the references a suggestion or motivation to adapt the test plug and overflow pipe of the Lewis reference with the cap of the Oropallo reference has been carefully considered. However, the Lewis reference clearly teaches the suggestion and motivation for using the alternative to form the overflow pipe with interior threads and the test plug with outer or exterior threads as clearly pointed out in the above rejection of the claims.

6. In response to applicant's argument that the combination of the prior art references do not lead to the invention as claimed, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

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7. Contrary to applicant's assertion that the claimed combination does not meet each and every limitation of claims 1 and 2, it is clearly pointed out in the above rejection of the claims, that the references do indeed meet each and every limitation of claims 1 and 2.

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gene Mancene  
Supervisory Patent Examiner  
Group 3700



Kathleen J. Prunner

July 19, 2004